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December 28, 1999

VIA HAND DELIVERY

Magalie Roman Salas, Esq.
Office of the Secretary
Federal Communications Commission
445 12th Street, SW, TW-A325
Washington, DC 20556

Re: CC Docket No: 96-149, Reply Comments of BellSouth Corporation regarding the Request of CIX and ITAA to Extend the Sunset Date for § 272 Restrictions on interLATA Information Services

Dear Ms. Salas:

Attached are one original and seven copies of the Reply Comments of BellSouth Corporation in the above captioned matter. Additional copies have been provided to persons specified in the Commission's Public Notice of December 9, 1999, establishing the pleading cycle in this matter, as indicated on the attached certificate of service.

A further additional copy is also enclosed. Please date-stamp and return it in the self-addressed, stamped envelope provided. Thank you for your assistance in this matter.

Very truly yours,

Sean Lev

Enclosure

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
Request for Extension of the Sunset Date of the Structural, Non-Discrimination, and Other Behavioral Safeguards Governing Bell Operating Company Provision of In-Region, InterLATA Information Services	)	CC Docket No. 96-149

REPLY COMMENTS OF BELLSOUTH CORPORATION

BellSouth Corporation demonstrated in its opening comments that there is no legal or policy basis for postponing the sunset date for the separate affiliate requirement and other requirements in section 272 of the Communications Act governing Bell operating company ("BOC") provision of interLATA information services. The BOCs wield no market power in the interLATA information services market, as the Commission has defined it in this docket, and have no prospect of obtaining such power. In fact, the BOCs are tiny players in the Internet content market and do not even provide interLATA transmission. Moreover, even if the BOCs had such market power, existing non-structural Commission safeguards would provide more than ample protection against competitive harm at much lower cost to consumers and competition, as the Commission itself has repeatedly concluded. For all these reasons, the Requestors have not carried their burden of demonstrating that the Commission should extend the congressionally imposed deadline.

Nor do the comments filed in support of the Request carry that burden. On the contrary, those comments, like the Request itself, consistently ignore Congress's decision *not* to tie the sunset date for interLATA information services to circumstances in the local telecommunications market (as reflected in the Commission's granting of section 271 relief). Because of that error, none of those comments even addresses the state of competition in the market that is actually at issue here—the market for interLATA information services.

Instead, the commenters supporting the request argue almost exclusively about competitive circumstances in the markets for *intra*LATA DSL services. Those arguments are not only irrelevant; they are wrong even on their own terms. Abundant evidence demonstrates that competition has flourished in those markets even as the BOCs have participated without being subject to structural separations.

I. CONGRESS DID NOT TIE THE SUNSET PROVISION IN SECTION 272(F)(2) TO THE COMMISSION'S GRANTING SECTION 271 RELIEF TO THE BOCS.

The comments in support of extending the congressionally created sunset date rest on the same central legal error that infects the Request itself. For instance, in its terse and conclusory comments, AT&T does little more than repeat the fiction that Congress intended section 272's requirements for BOC provision of interLATA information services to remain in effect for some period after the Commission granted section 271 relief. "[T]he BOCs first had to meet § 271's carefully crafted requirements," AT&T says, "then the BOCs were to operate under § 272's regime of separation, accounting and nondiscrimination safeguards until their market power had dissipated sufficiently that it

no longer posed a threat to consumers or competition."[1] As BellSouth and other commenters have already explained, this argument simply misreads the statute.[2] Although Congress did mandate that the BOCs comply with section 272's requirements in the *telecommunications and equipment manufacturing* areas for three years after receiving section 271 relief,[3] the requirements in the *information services* area, unless extended by Commission rule or order, will lapse after a fixed four-year period.[4]

That basic dichotomy reflects Congress's understanding that a four-year window would allow the already competitive market for interLATA information services to develop further and thereby to obviate any conceivable threat of anticompetitive behavior on the part of the BOCs (regardless whether any BOC had received section 271 relief). And, in fact, that market has flourished beyond Congress's grandest expectation. In the time since the Telecommunications Act of 1996 was passed, the explosive growth in competition spawned by the Internet has surpassed all predictions, rendering the separate affiliate requirement and other requirements of section 272 completely superfluous. Things might have turned out differently, of course, and Congress empowered the Commission to postpone the sunset date just in case competition in interLATA information services did not develop as expected. However, the onus is on those who would extend section 272's restrictions beyond the sunset period established by Congress

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[1] Comments of AT&T Corp. at 3; *see also* Comments of the Telecommunications Resellers Ass'n at 4-5.

[2] *See* Comments of BellSouth Corp. at 5-7; Opposition of SBC Communications Inc. at 4; Opposition of U S WEST Communications, Inc. at 3-5; Comments of Bell Atlantic at 3-4.

[3] *See* 47 U.S.C. § 272(f)(1).

[4] *See id.* § 272(f)(2).

to identify how BOCs threaten competition so as to justify the exercise of the Commission's postponement power.

But neither AT&T nor any of the other commenters even attempts to demonstrate that the BOCs threaten to obtain market power in the provision of interLATA information services (which have been defined in this docket as a bundled product that includes both content and interLATA transmission). In fact, as BellSouth demonstrated in its Comments, the evidence is overwhelmingly to the contrary. Competition in the content aspect of that market is fierce, and entry barriers are very low.[5] And the transmission aspect of that market—in particular, the provision of Internet backbone services—is characterized by entrenched, vertically integrated oligopolists.[6] The proposed merger between MCI WorldCom and Sprint, the two largest Internet backbone providers, threatens to increase concentration in this already concentrated market. Accordingly, far from harming competition, BOC entry could only enhance competition and help dislodge the oligopoly.

Moreover, even if there were reason for concern about BOC market power in information services, the Commission's non-structural safeguards would be more than adequate to alleviate any such concern.[7] As other commenters have properly observed, the effectiveness of the *Computer III* regime of accounting and cost-allocation safeguards

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[5] *See* Comments of BellSouth Corp. at 7-10.

[6] *See id.* at 10-11.

[7] *See Computer III Further Remand Proceedings: Bell Operating Company Provision of Enhanced Services*, Report and Order, 14 FCC Rcd 4289 ¶11 (1999) (reaffirming that existing non-structural safeguards are "conducive to the operation of a fair and competitive market for information services"); *see also* Comments of BellSouth Corp. at 17-21; Opposition of SBC Communications Inc. at 12-16; Opposition of U S WEST Communications, Inc. at 10-12; Comments of Bell Atlantic at 4-7.

is shown not only by the explosive growth in the market for information services but also by the remarkable fact that, in the nearly 14 years since the Commission began relying on non-structural safeguards, not a single complaint has been filed alleging a failure on the part of a BOC to comply with the relevant Commission rules.[8]

In sum, the commenters supporting the Request have not even tried to carry their burden of demonstrating that conditions in the interLATA information services market warrant the Commission stepping in and affirmatively ordering the continuation of costly structural separation requirements. For that reason alone, their position should be rejected.

II. COMMENTS ADDRESSING BOC PROVISION OF DSL-CONDITIONED LOOPS TO CLECS ARE IRRELEVANT TO THE DECISION BEFORE THE COMMISSION

Unable to muster any evidence relevant to the market at issue here, Prism Communication Services, Inc. ("Prism") and the Telecommunications Resellers Association ("TRA") devote their comments to reciting generalized concerns about *intra*LATA issues—in particular, the provision of DSL-conditioned loops in a timely and accurate fashion.[9]

These arguments are not only incorrect; they are legally irrelevant. Provisioning of local loops is neither an interLATA service nor an information service (much less an interLATA information service, as defined in this docket), and section 272 has nothing to say about it. As SBC correctly stated with respect to similarly misguided arguments

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[8] *See* Comments of Bell Atlantic at 5; *see also* Opposition of SBC Communications Inc. at 9 n.22; *cf.* Request at 20 (acknowledging that existing joint cost regulations prohibit cross-subsidization of Internet offerings by BOCs from telecommunications inputs).

[9] Comments of the Telecommunications Resellers Ass'n at 6-9; Comments of Prism Telecommunication Servs., Inc. at 3-5.

contained in the Request itself, Prism and the TRA "have shown no nexus between entry into in-region, interLATA information services markets on an integrated basis and anticompetitive conduct in the advanced services market."[10] That is to say, they never offer any explanation of how the creation of separate BOC affiliates for interLATA information services—affiliates that would provide content and interLATA transport—will help alleviate their concerns about obtaining DSL-conditioned loops.

In any event, the Commission has in place detailed rules to ensure that ILECs provision DSL facilities in a non-discriminatory manner.[11] Allegations of failure to comply with those rules can be adjudicated by state authorities or this Commission in appropriate circumstances, but they have no place in these proceedings. Prism and the TRA thus have ample means of recourse as to the issues that concern them, but not in this docket.

Furthermore, the Commission's rules are working. Isolated allegations by Prism and the TRA cannot obscure the fact that competition in broadband services is flourishing even as the BOCs provide these services on an integrated basis without being subject to

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[10] Opposition of SBC Communications Inc., at 7.

[11] *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, First Report and Order and Further Notice of Proposed Rulemaking, 14 FCC Rcd 4761, ¶¶ 19-60 (1999) (collocation requirements); *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, CC Docket No. 96-98, FCC 99-238, ¶¶ 190-195 (FCC rel. Nov. 5, 1999) (unbundling requirement for DSL-conditioned loops even where ILEC does not provide DSL service); *id.* ¶ 313 (requirement of sharing or collocation of DSLAMs located at remote terminals); *id.* ¶¶ 426-431 (access requirements for loop qualification information); *Deployment of Wireline Services Offering Advanced Telecommunications Capability and Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, Third Report and Order in CC Docket No. 98-147, Fourth Report and Order in CC Docket No. 96-98, FCC 99-355 (FCC rel. Dec. 9, 1999) (line sharing and spectrum compatibility requirements).

section 272's requirements.[12] Nor is TRA correct in saying that "all competitors, including providers of information services, must continue to deal with the BOC to obtain access to essential services and/or facilities."[13] DSL itself represents just a small part of the broadband market, which is dominated by technologies that bypass the local loop altogether. Indeed, the Commission has already concluded that the traditional telephone plant is "not ideally suited for broadband."[14] Earlier this year, moreover, the Commission catalogued "the current deployment of improved and entirely new broadband facilities that serve the last mile to residential consumers" and determined which competitors were the "most advanced in deployment at this time."[15] ILECs finished at the bottom of the list, behind cable companies, public utilities, CLECs, and wireless providers. The Commission's own analysis thus confirms that the BOCs lack market power in broadband services.[16]

Prism and the TRA's focus on DSL provisioning is therefore inapposite. Indeed, to the extent that these intraLATA advanced services issues have any relevance here, the existence of detailed and enforceable rules to ensure fair competition in advanced services makes it harder for a BOC to leverage any alleged market power into

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[12] *See* Comments of BellSouth Corp. at 12-17; Opposition of SBC Communications Inc. at 6-8; Opposition of U S WEST Communications, Inc. at 5-9; Comments of Bell Atlantic at 8-12.

[13] Comments of the Telecommunications Resellers Ass'n at 6.

[14] *See Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996,* 14 FCC Rcd 2398 ¶ 46 (1999) ("*Advanced Services Report*").

[15] *Id.* ¶ 53.

[16] *Id.* ¶¶ 54-58.

information services. For that reason, an extension of section 272's requirements is all the more unnecessary.

CONCLUSION

No party has provided the Commission with evidence establishing that the BOCs could ever hope to wield power in the interLATA information services market. Accordingly, neither the Requestors nor the commenters have carried their burden of demonstrating why the Commission should take affirmative steps to extend the sunset date that Congress set for section 272's requirements with respect to interLATA information services. Hence, the Commission should allow those provisions to sunset on the schedule set by Congress.

Respectfully submitted,

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December 28, 1999

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CERTIFICATE OF SERVICE

I, Jonathan Rabkin, hereby certify that on this 28th day of December, 1999, copies of the foregoing Reply Comments of BellSouth Corporation were served upon the following parties via hand-delivery or first class United States mail:

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